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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 ANDREW A. CEJAS,

11 Plaintiff,

12 v.

13 DANIEL PARAMO, et al.,

14 Defendants.

CASE NO. 14cv1923-WQH-WVG

ORDER

HAYES, Judge:

15 The matter before the Court is the Report and Recommendation (ECF No. 29)
16 filed by the Magistrate Judge on the Defendants' Motion to Dismiss (ECF No. 17).

17 **I. Background**

18 On August 15, 2014, Plaintiff Andrew A. Cejas ("Plaintiff") initiated this action
19 by filing the Complaint. (ECF No. 1). On June 27, 2016, Plaintiff filed a motion to
20 proceed in forma pauperis. (ECF No. 4). On July 20, 2016, the Court issued an order
21 granting Plaintiff's motion to proceed in forma pauperis and directing the U.S. Marshal
22 to effect service and summons of the complaint. (ECF No. 7).

23 On October 4, 2016, Defendants D. Jaime, D. Paramo, S. Rutledge, and D.
24 Strayhorn ("Defendants") filed a motion to dismiss. (ECF No. 17). Defendants moved
25 to dismiss Plaintiff's First and Fourteenth Amendment claims against Defendant
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1 Paramo, and the retaliation claim against Defendants Jaime and Strayhorn.¹ *Id.* On
2 November 25, 2016, Plaintiff filed a response in opposition to Defendants' motion to
3 dismiss. (ECF No. 24).

4 On March 28, 2017, the Magistrate Judge filed the Report and Recommendation.
5 (ECF No. 29). The Magistrate Judge concluded that Plaintiff has not alleged facts
6 sufficient to state a claim for relief that is plausible on its face with respect to Plaintiff's
7 First and Fourteenth Amendment claims against Defendant Paramo and his retaliation
8 claim against Defendant Jaime. *Id.* at 8. The Magistrate Judge further found that
9 Plaintiff has not alleged sufficient facts to state a claim for violation of his First
10 Amendment right of access to the courts against Defendant Paramo. *Id.* at 19. The
11 Magistrate Judge recommended that Defendant's motion to dismiss be granted as to
12 Plaintiff's retaliation claim against Defendant Jaime and Plaintiff's First and Fourteenth
13 Amendment claims against Defendant Paramo. *Id.* at 22.

14 On June 16, 2017, the Court issued an order granting Plaintiff's motion for
15 extension of time, and ordered that any objection by Plaintiff must be filed no later than
16 August 14, 2017, and that any reply by Defendants must be filed no later than August
17 28, 2017. (ECF No. 32). On August 14, 2017, Plaintiff filed objections to the Report
18 and Recommendation. (ECF No. 37). On August 28, 2017, Defendants filed a reply
19 to Plaintiff's objections. (ECF No. 38).

20 **II. Standard of Review**

21 The duties of the district court in connection with a report and recommendation
22 of a magistrate judge are set forth in Federal Rule of Civil Procedure 72(b) and
23 28 U.S.C. § 636(b). The district judge must "make a de novo determination of those
24 portions of the report or specified proposed findings or recommendations to which
25 objection is made[,]" and "may accept, reject, or modify, in whole or in part, the
26 findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b). The

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28 ¹ Plaintiff does not bring a retaliation claim against Defendant Strayhorn. *See*
ECF No. 24 at 15 ("Defendant Strayhorn was not added to the First Cause of Action for
Retaliation.").

1 district court need not review de novo those portions of a Report and Recommendation
2 to which neither party objects. *See Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir.
3 2005); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc)
4 (“Neither the Constitution nor the [Federal Magistrates Act, 28 U.S.C. § 636] requires
5 a district judge to review, de novo, findings and recommendations that the parties
6 themselves accept as correct.”).

7 **III. Discussion**

8 **A. Plaintiff’s First Objection: Retaliation Claim against Defendant Jaime**

9 Plaintiff contends that the Magistrate Judge erred in recommending the dismissal
10 of his retaliation claim against Defendant Jaime because Plaintiff adequately pled a
11 causal connection as to his retaliation claim between Defendant Jaime’s cell search and
12 Plaintiff’s grievance against Defendant Rutledge. (ECF No. 37 at 4). Plaintiff contends
13 that he adequately pled a causal connection because Defendant Jaime’s cell search sheet
14 contained Plaintiff’s hat, which was taken away by Defendant Rutledge prior to the cell
15 search. *Id.* Plaintiff contends that the hat was not inside the cell during Defendant
16 Jaime’s search, but the hat was included on the cell search sheet. *Id.* Plaintiff contends
17 that this serves as “[e]vidence of retaliatory motive by Defendant Jaime.” *Id.*

18 The Magistrate Judge found that Plaintiff failed to allege an adequate connection
19 between the grievance and the subsequent cell search because Defendant Jaime was a
20 third party to and had no knowledge of any dispute between Plaintiff and Defendant
21 Rutledge. Plaintiff alleges that on the day of the cell search, while waiting to access the
22 law library, he approached Defendant Rutledge to ask how Rutledge would respond to
23 Plaintiff’s earlier complaint. (ECF No. 1 at 14). Plaintiff alleges that Defendant
24 Rutledge ordered Officer Carter to confiscate a hat that Plaintiff was wearing. *Id.*
25 Plaintiff alleges that Defendant Rutledge and Officer Carter then walked together to the
26 Program office. *Id.* Plaintiff alleges that later the same day, Defendant Rutledge
27 ordered Defendant Jaime to search Plaintiff’s cell. *Id.* In the cell search sheet
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1 completed by Defendant Jaime attached to the Complaint,² Defendant Jaime lists
2 Plaintiff's baseball hat as an item that was confiscated. *Id.* at 83. Plaintiff asserts that
3 the baseball hat was not in his cell during the search, but it still appears on Defendant
4 Jaime's cell search sheet.

5 After reviewing Plaintiff's Complaint and objection, the Court concludes that the
6 Magistrate Judge correctly found that Plaintiff has not sufficiently pled the third
7 element of his retaliation claim. Plaintiff's allegations are not sufficient to establish that
8 Defendant Jaime was aware of Plaintiff's grievance against Defendant Rutledge at the
9 time of the cell search. Plaintiff's allegation that Defendant Rutledge ordered
10 Defendant Jaime to search Plaintiff's cell, alone, is insufficient to establish that
11 Defendant Jaime had a retaliatory motive in conducting the cell search. *See Wood v.*
12 *Yordy*, 753 F.3d 899, 905 (9th Cir. 2014) ("We have repeatedly held that mere
13 speculation that defendants acted out of retaliation is not sufficient."). Plaintiff's first
14 objection to the Report and Recommendation is OVERRULED.

15 **B. Plaintiff's Second Objection: First and Fourteenth Amendment Claims**
16 **Against Defendant Paramo**

17 Plaintiff contends that the Magistrate Judge erred because Defendant Paramo had
18 a duty to review Plaintiff's appeals against Defendants Olson and Ramirez. (ECF No.
19 37 at 3). Plaintiff contends that Defendant Paramo violated this duty by not reviewing
20 Plaintiff's appeals, and that Defendant Paramo did not review the appeals in an effort
21 "to deter and chill Plaintiff's speech[.]" *Id.*

22 After reviewing Plaintiff's Complaint and objection, the Court concludes that the
23 Magistrate Judge correctly concluded that Plaintiff has not alleged sufficient facts to
24 state a claim for violation of his First Amendment right of access to the courts. To

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26 ² The Court takes judicial notice of the cell search sheet attached to the
27 Complaint. *See United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) ("A court
28 may, however, consider certain materials—documents attached to the complaint,
documents incorporated by reference in the complaint, or matters of judicial
notice—without converting the motion to dismiss into a motion for summary
judgment.").

1 adequately allege First and Fourteenth Amendment claims against Defendant Paramo
2 based on a *respondeat superior* theory, Plaintiff would first be required to adequately
3 allege that he was injured by Defendants Olson's and Ramirez's alleged failure to
4 process his grievances. As the Magistrate Judge correctly found, Plaintiff does not have
5 a liberty interest in access to the prison grievance process. *See Ramirez v. Galaza*, 334
6 F.3d 850, 860 (9th Cir. 2003) (concluding that the plaintiff's due process claim that the
7 plaintiff suffered the "loss of a liberty interest in the processing of his appeals" failed
8 because "inmates lack a separate constitutional entitlement to a specific prison
9 grievance procedure."). Further, any actions taken by Defendants Olson, Ramirez, or
10 Paramo did not result in Plaintiff being prevented from bringing this lawsuit. Plaintiff's
11 second objection to the Report and Recommendation is OVERRULED.

12 **IV. Conclusion**

13 IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 29)
14 is ADOPTED in full. Defendant's motion to dismiss (ECF No. 17) is GRANTED as
15 to Plaintiff's retaliation claim against Defendant Jaime and Plaintiff's First and
16 Fourteenth Amendment claims against Defendant Paramo. The motion to dismiss is
17 denied as moot as to any retaliation claim against Defendant Strayhorn. *See* ECF Nos.
18 24 at 15; 29 at 8 n.3.

19 IT IS FURTHER ORDERED that Plaintiff's objections to the Report and
20 Recommendation (ECF No. 37) are OVERRULED.

21 DATED: September 1, 2017

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23 **WILLIAM Q. HAYES**
24 United States District Judge
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